

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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|----------------------------|---|--------------|
| JOHN KNIGHT, et. al. |) | |
| |) | |
| Plaintiffs |) | |
| |) | |
| v. |) | 04-12698 JLT |
| |) | |
| CHRISTMAS TREE SHOPS, INC. |) | |
| |) | |
| Defendant |) | |

PLAINTIFFS' OPPOSITION TO THE MOTION TO COMPEL

Plaintiffs oppose defendant's motion to compel the production of documents. While lead counsel for plaintiffs, Mr. Joseph, agreed to produce these documents, he did not agree to produce them on December 19, 2005. On that date Mr. Joseph returned from California, and stated that he would begin work on the production that week, which he did. In fact, Mr. Joseph produced some of the documents requested that week, on December 21, 2005, and plans to complete the production within one week from today.

Had counsel for defendant actually held a conference on this matter this motion would have been unnecessary. The Rule 7.1 certificate was not filed with the motion as required by that rule

The certificate was filed five days later and is false. Neither Mr. Biagetti, nor Ms. Heim conferred with Mr. Joseph nor local counsel about this matter. We did exchange emails, but an exchange of emails does not constitute a conference.

The last such email was sent at 10:18 a.m. on December 22, 2005. That email was sent by defendant's counsel warning that a motion to compel would be filed if the documents requested were not received by close of business on that day. Counsel for defendant was informed by Mr. Joseph that he had a conflict with December 22 and could not conduct a deposition on that date. Apparently, counsel for defendant immediately began working on a

motion to compel as it was filed on December 22, 2005 at 4:19 p.m., just six hours after their “warning.” Counsel for defendant did not ever wait for the close of business on that date before filing a motion to compel.

Defendant’s counsel made no meaningful effort to have a conference and was just attempting to create a controversy when none really existed. Defendant’s certificate was late, false and improper, and the motion to compel should be denied.

/s/

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